

142nd General
Assembly
Senate Bill 284
Development
Related
Improvements
Requiring New
ROW

- Signed into law on July 22, 2004, and codified in 17 *Del. C.* § 507
- Section 507 authorized DelDOT to enact rules and regulations “... to determine where and under what conditions it will use its powers to acquire real property interest for the construction of **such** improvements...”

What situations can trigger the use of § 507?

- Insufficient ROW for off-site improvements (does not include lane tapers for entrance even if they are off-site).
- DeIDOT may have a capital transportation plan to make some of the developer required improvements but is on a different time schedule than the developer.
- The developer's project impacts create a need for the off-site improvements now and developer does not want to wait for DeIDOT's CTP project to be constructed.

DeIDOT's Regulations Implementing § 507

- The Regulations are found at 2 *Del. Admin. C.* §2308.
- The Regulations were first adopted in November 2006.
- Reference to the Regulations can be found in the DeIDOT Development Coordination Manual at section 2.5.2.
- Sample Forms are available on DeIDOT's website <http://devcoord.deldot.gov/>

Eligibility Requirements Under § 2308

- Must be consistent with Strategies for State Policies and Spending and within Investment Level 1, 2 or 3.
- Project is not in DelDOT's CTP or in the CTP, but not yet under design.
- Consistent with local comprehensive plan.
- Complies with the requirements of the Clean Air Act.
- Need for the transportation improvement project must be DOCUMENTED and CONFIRMED as part of the preliminary plan approval from the local land use agency.
- Transportation improvement must be adjacent to the public ROW.

Eligibility is not a Guarantee of Acceptance Under § 2308

- DeIDOT may defer acceptance of developer's project if it is located in an active transportation study area, where a study is about to be initiated, or, where the results could significantly impact or eliminate the need for the subject project.
- DeIDOT may deny the project where it would cause a loss of access to an abutting property.
- DeIDOT may deny the project where it would significantly reduce the value of the abutting property.
- DEFERRAL OR DENIAL IS AT DELDOT'S DISCRETION.

Project Accepted Under § 2308

What's Next?

- Alternative One (Preferred) - Agreement between developer and DeIDOT where developer takes the project lead and assumes all costs of planning, design, ROW acquisition, construction and inspections.
- Alternative Two - Agreement between developer and DeIDOT where DeIDOT takes the project lead.
 - Situations where Alternative Two may apply:
 - Complex Project.
 - Project is in DeIDOT's CTP and planning and design are complete, but ROW not acquired.
 - Development is in a TID or similar master planned area.
 - Developer is still obligated for costs.

Project Accepted Under § 2308 – Alt. 1

What's Next?

- Developer prepares and submits preliminary engineering plans, construction plans, ROW plans and estimates to DelDOT. See regulation for further details.
- Public Input Process – At least one public meeting after preliminary plan review. See regulation for further details.
- Developer's engineer to coordinate with utility companies.
- Inspection services

Section 2308 Real Estate Process

- Acquiring Real Estate via condemnation takes significant time and is a significant monetary expense.
- Before invoking DeIDOT's condemnation power the developer **must** exhaust all efforts to obtain the private property through voluntary good faith negotiations.
- Those developer efforts are not spelled out in the regulations.
 - DeIDOT Guidance – Initial letter to the property owner. A second letter if owner does not respond to first letter. Phone contact/meetings. Document all efforts.
 - Written offer for property at fair market value with at least 30 days to respond.
 - ROW plan or survey showing property to be acquired.

Section 2308 Real Estate Process - Condemnation

- Once developer has established all efforts to acquire the property through good faith voluntary negotiations has been exhausted, the acquisition of the property via condemnation may begin. A developer ROW Acquisition Agreement will be executed.
- Developer can expect at least 6 months to complete the process.
- Developer must provide DelDOT with a copy of its negotiation file.
- DelDOT will order an Appraisal, if required, **at developer's expense.**
- DelDOT will continue negotiations with owner in accordance with the Real Property Acquisition Act (RPAA"), 29 Del. C. §9501, *et seq.*, though an outside consultant, at **developer's expense.**

Section 2308 Real Estate Process – Condemnation

(Continued)

- DelDOT will send a written offer to property owner that complies with the RPAA, **at developer's expense.**
- If voluntary good faith negotiations fail, DelDOT will outsource the filing of the Condemnation Complaint to approved outside counsel, **at developer's expense.**
- Outside counsel's attorney's fees, filing fees, court costs, expert witness fees, deposition transcript fees and all costs of litigation will be, **at developer's expense.** A standard uncontested condemnation action will be approximately \$15,000 to \$20,000 all in.
- If the property owner contests any part of the proceedings and the matter proceeds to trial on the amount of just compensation to be paid, the condemnation litigation will cost significantly more, **at developer's expense.**

Section 2308 Real Estate Process – Condemnation

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- The developer shall deposit in Court the estimated just compensation owed to the property owner at the time of filing.
- The property owner can object to the award of possession. There are limited grounds upon which the property owner can rely, but nonetheless that issue would be litigated shortly after filing the Condemnation Complaint. The developer cannot disturb the owner's property until after the Court enters an order of possession.
- If the Court enters an order possession the matter will be scheduled for a trial on the amount of just compensation to be paid to the owner. The developer now has the legal right to enter the property to be acquired to do the necessary off-site improvements.
- If the matter proceeds to trial the owner may be entitled to recover her attorney's fees, certain expert witness fees, and court costs from the developer.

Section 2308 Real Estate Process – Condemnation

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- The developer is required, prior to trial, to file an offer of judgement in any amount it is willing to pay to acquire the property. If the owner accepts the offer than the litigation concludes, and the property has now been acquired. Certain legal pleadings will have to be filed by developer's attorney to close the litigation out.
- If the property owner does not accept the offer of judgment, the matter will proceed to trial before a jury of 3 who will determine the amount of just compensation owed.
- If the award is closer to the owner's appraised value than the developer's offer of judgment the owner can recover her attorney's fees and costs from the developer. For example, if owner's appraisal is \$30,000 and developer's offer of judgment is \$10,000 and the jury awards \$20,000.01 or more than the developer must pay the owner's reasonable attorney's fees and costs.



Any
Questions??